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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

ISAIAH PETILLO,

Defendant and Appellant.

B215246

(Los Angeles County
Super. Ct. No. BA318590)

APPEAL from a judgment of the Superior Court of Los Angeles County, Judith L. Champagne, Judge. Affirmed.

Deborah L. Hawkins, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Joseph P. Lee and David A. Wildman, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant, Isaiah Petillo, appeals from his conviction for second degree murder (Pen. Code, § 187, subd. (a)) and a personal deadly weapon use finding. (§ 12022, sub. (b)(1).)¹ Defendant argues that the trial court improperly admitted fingerprint evidence. We affirm.

We view the evidence in a light most favorable to the judgment. (*Jackson v. Virginia* (1979) 443 U.S. 307, 319; *People v. Elliot* (2005) 37 Cal.4th 453, 466; *Taylor v. Stainer* (9th Cir. 1994) 31 F.3d 907, 908-909.) Robert Dexter lived in the downstairs unit of a duplex in July 2000. Dudley Goss lived in the upstairs unit. At approximately midnight on July 12, 2000, Mr. Dexter was awakened by a loud scuffle in Mr. Goss's bedroom. Mr. Goss's apartment was above Mr. Dexter's. Mr. Dexter immediately called the police. While the call was being made, Mr. Dexter heard shouting and Mr. Goss's screams of pain. A tape recording of Mr. Dexter's call to police was played for the jury at trial. Mr. Dexter heard Mr. Goss say, "Just leave, just leave." Immediately thereafter, Mr. Dexter heard what sounded like six or seven blows like a fist striking someone. Mr. Dexter heard Mr. Goss groaning. Thereafter, Mr. Goss stopped groaning. Mr. Dexter went to the windows that looked out onto a patio in front of the residences. Mr. Dexter heard running in what sounded like the hallway, followed by what sounded like a body slamming into a door. Mr. Dexter then heard footsteps and the breaking of glass. Security lighting lit up the patio area. Mr. Dexter saw a man climbing down from the upstairs window onto a wrought iron gate. The man wore an off-white T-shirt and dark cotton pants. The man jumped up and over a wall. Mr. Dexter moved into the dining room, where he saw the man walk by. The man had a brown complexion and looked like he was of mixed Latin and African-American heritage. Mr. Dexter believed the man stood approximately 5 feet, 7 inches to 5 feet, 10 inches tall. The man was well built. Mr. Dexter told the police operator that the man had short hair. At trial, Mr. Dexter described the man's hair as: "[S]hort, wiry, almost a shaved head. Kind of curly, short."

¹ All further statutory references are to the Penal Code unless otherwise indicated.

When the police arrived, Mr. Dexter unlocked the patio gate and the door to Mr. Goss's residence.

Darnella Adams lived next door to Mr. Goss. Ms. Adams had seen a man walk up to the security gate at Mr. Goss's residence. Ms. Adams then left to walk to a nearby bus stop. When Ms. Adams returned 15 to 20 minutes later, she heard a noise at Mr. Goss's window. Ms. Adams saw a man that resembled the person she had seen earlier. The man pushed the screen out and jumped out the window to a nearby wall in the patio area. The man then jumped over a fence. After the police arrived, Ms. Adams was standing on her front porch. Ms. Adams saw the same man she had seen jump out of the window. The man stopped at a nearby tree before retreating again.

Ms. Adams spoke to a police officer about the incident. Ms. Adams described the man as being of average height, with brown skin, a bald head and a muscular build. Ms. Adams believed the man was African American. When Ms. Adams was shown a photographic lineup in February 2007, she selected defendant's photo as resembling the build, complexion, and oval shape of the man she saw on July 12, 2000.

Phillip Walters, who lived approximately one-half mile from Mr. Goss's residence, found a bloody knife on his lawn on the morning of July 12, 2000. The handle on the knife was bent at a 90-degree angle. Mr. Walters heard that someone had been stabbed in the neighborhood. Mr. Walters put the knife in a bag and gave it to the police that morning.

On July 22, 2000 Los Angeles Police Officer Charles Wunder and a partner saw defendant walking on San Pedro Place. Defendant looked directly at the officers. Defendant then turned and walked away in the opposite direction. Defendant dropped something to the sidewalk. Officer Wunder got out of the police car. Defendant then ran away. Defendant's oversized pants fell below his ankles, causing him to fall to the ground. Defendant resisted Officer Wunder's attempts to handcuff him. Eventually, both officers were able to handcuff defendant. Defendant became belligerent, yelled profanities at the officers and stated he "wasn't going to" go back to jail. Defendant refused to get into the police car, indicating he would fight.

When police officers entered the apartment on July 12, 2000, they found Mr. Goss's body in a pool of blood. Mr. Goss's head was almost decapitated. An autopsy performed on Mr. Goss's body revealed a total of 42 stab wounds to his body, including his face and head. One fatal wound perforated the victim's left carotid artery and one of cervical vertebrae. All of the head and neck wounds appeared to be made while Mr. Goss was still alive.

Los Angeles Police Department Criminalist Michael Mastrocovo and three other criminalists went to Mr. Goss's apartment. Mr. Mastrocovo was joined by the three other criminalists. Mr. Mastrocovo was trained in deoxyribonucleic acid. Because of the complexity of the crime scene, Mr. Mastrocovo was there more than 10 hours. A window screen was found on the couch. Mr. Mastrocovo observed bloody marks which appeared to be finger patterns on the edges of the screen. After taking one sterile swab from the red stain on the screen, it was taken back to the laboratory for processing. There were multiple red stains collected from the open window sill. A piece of skin was recovered from the window sill. A piece of the window sill was cut out to collect the red stains and was subsequently taken to the lab. A large bent knife was recovered from a plant directly below the open window. A swab was taken of red stains on the knife. Blood stains were observed on the top of an iron fence near the patio.

Mr. Mastrocovo later compared an oral swab taken from defendant's mouth to the stain swab taken from the screen found at the crime scene. The results included a mixture of deoxyribonucleic acid from defendant and Mr. Goss. The major profile matched defendant's profile. The random match of defendant's deoxyribonucleic acid was one in on sextillion. Mr. Mastrocovo also compared the deoxyribonucleic acid from both defendant and Mr. Goss to the skin found on the window sill. Defendants profile matched 12 of the 13 deoxyribonucleic acid locations or one in 100 quintillion. The deoxyribonucleic acid profile on the red stain from the window sill revealed a mixed profile with the major profile, being that of Mr. Goss and the minor profile consistent with defendant.

Forensic print specialist Jose Torres also went to Mr. Goss's apartment on July 12, 2000. Mr. Torres lifted six latent prints from: the door knob on the outside wrought iron door; the wrought iron door itself; the front door; the doorbell; a crystal vase; and the drain gutter. Mr. Torres also lifted two latent prints from the grill assembly and front passenger door of a 1997 Toyota 4-Runner. Another print specialist, identified only as Mr. Lainez, lifted two latent prints from the passenger and driver's doors of a 1997 Toyota Tacoma truck. Mr. Lainez also lifted five prints from the crime scene: two on a wooden staircase railing; one from the bedroom door jamb; one from a Lucozade glass bottle; and one from a metal staircase railing.

Forensic print specialist Emma Duke performed a print comparison in this case. Ms. Duke had over 18 years experience as a fingerprint and latent print examiner. Ms. Duke had compared over 3,000 partial palm prints and over 10,000 fingerprints. In visible prints that are found in a liquid like blood, the ridge characteristics of the latent print are photographed. The scientist then compares the photograph of the print with those of individuals identified either through the computer or investigators. Once Ms. Duke has completed her comparison, the supervisor would have two other print specialists verify her findings. Ms. Duke personally took fingerprints as well a palm print from defendant and placed them on a card. Ms. Duke compared a photograph of latent prints found on a railing at the crime scene to defendant's prints. Based upon on her extensive experience, Ms. Duke concluded that the palm print in the photograph matched defendant's. Ms. Duke also compared the palm print in the photograph to a prior print card that captured defendant's prints. Ms. Duke had two other fingerprint experts verify her conclusion that defendant's palm print on the prior print card matched that in the photograph.

Defendant's sole contention is that the trial court improperly admitted the verification reports of two print examiners who verified Ms. Duke's comparison of defendant's palm print from a prior print card with the palm print lifted at the crime scene. Defendant further argues that the trial court's admission of "hearsay verifications and admission of exhibit No. 78" violated his federal confrontation rights. When Ms.

Duke testified at trial that, after comparing the photograph of the palm print with defendant's prior print card and the prints she had personally taken from him, she had determined that they matched. Thereafter, the prosecutor inquired whether the previous match had been verified by two other fingerprint experts. Defense counsel entered a hearsay objection. The trial court overruled the objection, noting: "You may answer. You would have gotten word back in a business record." Ms. Duke responded, "Yes." The prosecutor then introduced exhibit No. 78 which is a, "[S]cientific investigation division latent print unit comparison report." The prosecutor inquired, "Is this basically the report that verifies to you that the - - that your analysis had been double checked?" Ms. Duke, responded, "Yes." Defense counsel then entered another hearsay and lack of foundation objection, which was overruled.

Relying on the holdings in *Melendez-Diaz v. Massachusetts* (2009) ___ U.S. ___, ___, [129 S.Ct. 2527, 2542] (plur. opn. of Scalia, J.) and *Crawford v. Washington* (2004) 541 U.S. 36, 68, defendant argues that the admission of Ms. Duke's testimony that two print specialists verified the findings of her palm print comparison and the report they prepared violated his Sixth Amendment right to confront adverse witnesses. In *Crawford v. Washington*, *supra*, 541 U.S. at page 68, the United States Supreme Court held that the admission of testimonial hearsay constitutes a violation of the Sixth Amendment right to confrontation when the declarant is unavailable to testify at trial and there was no prior opportunity for cross-examination. In *Melendez-Diaz v. Massachusetts*, *supra*, ___ U.S. at page ___ [129 S.Ct. at page 2542] the United States Supreme Court plurality found that a "certificate of analysis" which stated the results of forensic analysis performed on a controlled substance was inadmissible without the live testimony of the analyst at trial. *Melendez-Diaz* held: "The Sixth Amendment does not permit the prosecution to prove its case via *ex parte* out-of-court affidavits. . . ." (*Ibid.*)

In *People v. Geier* (2007) 41 Cal.4th 555, 607, our Supreme Court also found no Confrontation Clause error where Dr. Robin Cotton, who testified at trial, relied upon the data compiled by other scientists in forming an opinion about the results of deoxyribonucleic acid testing. In *People v. Gutierrez* (2009) 177 Cal.App.4th 654, 664-

665, a supervisor testified at trial regarding the sexual assault examination performed by a nontestifying nurse practitioner. The Court of Appeal held the supervisor's opinion testimony did not violate the Confrontation Clause because she was subject to cross-examination regarding the tests and protocol involved and the admission of the related report was harmless error.

In this case, Ms. Duke was not merely qualified to offer opinion testimony in the field of latent print comparisons, but was the forensic scientist that personally performed the comparison in question. Ms. Duke was subject to extensive cross-examination regarding her findings. Defendant's objections relate to the report of the properly qualified opinion witness who verified her findings as part of the routine protocol of the police department's scientific investigation division. Ms. Duke could logically rely on the reviewing specialists' findings that her conclusions were correct. Any question about that verification could have been and were posed to her directly on cross-examination. As a result, no Confrontation Clause violation occurred.

In any event, any error in admitting the statements and the related documents was harmless under any prejudiced based standard of reversible error. (*Chapman v. California* (1967) 386 U.S. 18, 24; *People v. Ruttenschmidt* (2009) 176 Cal.App. 4th 1047, 1076-1077; *People v. Watson* (1956) 46 Cal.2d 818, 836.) Mr. Mastrocovo's testimony placed defendant at the murder scene through deoxyribonucleic acid profiles taken from both the blood on the window screen and the skin found on the window sill. Defendant was also identified by Ms. Adams as matching the assailant's build, complexion and head shape. Finally, the verification by the reviewing specialists related only to the prior print card. Ms. Duke had also compared the prints she took of defendant herself and confirmed that those prints matched the one in the photograph. It is clear beyond a reasonable doubt that a rational jury would have found defendant guilty even absent the purported error.

The judgment is affirmed.

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TURNER, P. J.

We concur:

ARMSTRONG, J.

MOSK, J.